UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

PAVEL MASHKOVTSEV, Plaintiff, v. IRIS PAN, HANG WU, and JP STREET INC, Defendants.	Case No.: 1:16-cv-00161 **FIRST AMENDED COMPLAINT**

Plaintiff Pavel Mashkovtsev ("Plaintiff" or "Mashkovtsev") by and through his counsel, Hymowitz Law Group, PLLC, alleges against Defendant JP Street Inc ("JP Street"), Defendant Iris Pan ("Pan"), and Defendant Hang Wu, also known as Ken Wu ("Wu") (collectively "Defendants") as follows:

NATURE OF THE ACTION

1. Plaintiff Mashkovtsev brings this action for violations of Fair Labor Standards Act of 1938, 29 U.S.C. § 201 *et seq.* ("FLSA") and violations of New York Labor Law § 1 *et seq.* ("NYLL") and supporting regulations by Defendants.

PARTIES

2. Plaintiff Mashkovtsev is an individual residing in Brooklyn, New York.

3. On information and belief, Defendant JP Street is a New York corporation with a principle place of business at 52 E 8 Street, New York, NY 10003.

4. On information and belief, Defendant Hang Wu (also known as Ken Wu) is a co-owner and/or manager of JP Street. On information and belief, Defendant Hang Wu resides in Brooklyn, New York.

5. On information and belief, Defendant Wu is one of ten largest shareholders of JP Street. By virtue of his ownership, Defendant Wu is personally liable for all debts, wages, or salaries

due and owing to Mashkovtsev, for services performed by him for JP Street, pursuant to N.Y. Bus. Corp. Law § 630(a). Pursuant to N.Y. Bus. Corp. Law § 630(a), Mashkovtsev has notified Defendant Wu that Mashkovtsev intends to hold Wu personally liable for all debts, wages or salaries due and owing to Mashkovtsev for the services that he provided to JP Street.

6. On information and belief, Defendant Iris Pan is a manager of JP Street. On information and belief, Defendant Iris Pan resides in Brooklyn, New York.

7. On information and belief, Defendants Wu and Pan are husband and wife.

JURISDICTION AND VENUE

8. This Court has subject matter jurisdiction pursuant to 29 U.S.C. § 216(b) because this action has an FLSA claim. This Court also has supplemental jurisdiction over the New York State law claims under 28 U.S.C. § 1367 because such claims are so related to this action within such original jurisdiction that they form part of the same case or controversy.

9. This Court has personal jurisdiction over JP Street because it is a New York corporation.

10. This Court has personal jurisdiction over Hang Wu because, on information and belief, he domiciles in New York State.

11. This Court has personal jurisdiction over Iris Pan because, on information and belief, she domiciles in New York State.

12. Venue is proper in this district under 28 USC § 1391 because, on information and belief, Defendants Pan and Wu reside in the Eastern District of New York and all Defendants are residents of New York State.

FACT ALLEGATIONS

13. JP Street is a New York corporation operating a restaurant located at 52 E 8 Street, New York, NY 10003.

14. While employed by JP Street in the restaurant, Plaintiff Mashkovtsev engaged in

interstate commerce by regularly ordering goods, such as raw food and plastic plates, containers, and utensils, produced in states other than New York, and by regularly unloading delivery trucks with the ordered raw food, plates, containers, and utensils.

15. On or around May 4, 2015, Mashkovtsev started working for JP Street as a chef.

16. JP Street supervised its employees. At all relevant times, Defendants Pan and Wu supervised Mashkovtsev work.

17. JP Street had the power to hire and fire employees. Defendants Pan and Wu hired and fired employees, including Mashkovtsev.

18. JP Street supervised and controlled employee work schedule and conditions of employment. Defendants Pan and Wu assigned the job tasks to the employees and controlled employees' schedules, including Mashkovtsev's, schedule and overtime.

19. JP Street determined the rate and method of compensation. Defendants Pan and Wu determined Mashkovtsev's wages at the time of hire and paid him part by check part by cash according to their own method of compensation.

20. On information and belief, JP Street maintained employment records.

21. The last day of Mashkovtsev's employment with JP Street was on October 30, 2015.

22. From May 4, 2015 until May 15, 2015, Mashkovtsev's regular rate of pay was $13.50 per hour.

23. From May 16, 2015 until October 30, 2015, Mashkovtsev's regular rate of pay was $14.50 per hour.

24. On average, Mashkovtsev worked around 55.5 hours per week.

25. Defendants have not provided Mashkovtsev with a notice setting forth the terms of his compensation at the time when Mashkovtsev started his employment for JP Street or at any other

time.

26. On information and belief, Defendants have a wage notice prepared for Mashkovtsev signature.

27. On information and belief, among others, the notice states that Mashkovtsev's overtime compensation would be $8.00 per hour.

28. On information and belief, among others, the notice states that for overtime hours, Mashkovtsev would be misclassified as an independent contractor instead of employee, although his duties were identical for all the hours.

29. On information and belief, the notice is in English and Chinese, although Mashkovtsev primary language is Russian.

30. Defendants never furnished the notice on Mashkovtsev and he never signed the notice or an acknowledgement of receiving the notice.

31. At the time when JP Street paid Mashkovtsev for a given pay period, as a condition of receiving his wages, Mashkovtsev had to sign a wage statement.

32. Defendants did not allow Mashkovtsev to retain a copy of, take a photo of, or even closely examine the signed wage statement.

33. The wage statements that Mashkovtsev signed contained a smaller number of hours than he actually worked for the corresponding period.

34. Mashkovtsev's compensation was based on the working time reflected in the wage statements, not on the actual number of hours he worked during a given pay period.

35. Based on the wage statements, Defendants failed to compensate Mashkovtsev for a substantial number of overtime hours.

36. For the hours that Defendants did compensate Mashkovtsev, they compensated

Mashkovtsev by check for the first 40 hours at his regular hourly rate of $13.50 and then $14.50; and by cash for the hours over 40 in a given week at the rate of $8.00 per hour.

37. Defendants failed to pay Mashkovtsev at one and one half his regular rate for overtime hours (hours over 40 in a given week).

38. Defendants failed to pay Mashkovtsev one hour's pay at the basic minimum hourly wage rate, in addition to the minimum wage for any day in which the spread of hours exceeded 10 hours.

39. Defendants' failure to pay Mashkovtsev his proper compensation was willful.

40. Approximately two weeks before his termination, Mashkovtsev complained to Defendants Pan and Wu that he wanted to get wage statements for his overtime compensation.

41. Immediately after his complaint, Defendants reduced Mashkovtsev's overtime.

42. When Mashkovtsev complained about that, Defendants terminated his employment.

COUNT I
(Overtime Violations under the FLSA)

43. Mashkovtsev incorporates the allegations of all preceding paragraphs.

44. Defendants knowingly, willfully, and intentionally failed to pay overtime pay at a rate one and one-half times the regular rate for hours worked in excess of forty (40) hours a week, in violation of 29 U.S.C. § 207(a)(1).

45. Because of Defendants' willful violation of the FLSA, Mashkovtsev is entitled to recover from Defendants underpaid overtime compensation, an additional equal amount as liquidated damages, as well as reasonable attorney's fees and costs of the action, all in the amount determined at trial.

COUNT II
(Overtime Violations under the NYLL)

46. Mashkovtsev incorporates the allegations of all preceding paragraphs.

47. Defendants knowingly, willfully, and intentionally failed to pay overtime pay at a rate one and one-half times the regular rate for hours worked in excess of forty (40) hours a week in violation of NYLL § 652, and supporting regulation 12 NYCRR §146-1.4.

48. Because of Defendants' willful violation of the NYLL and supporting regulations, Mashkovtsev is entitled to recover from Defendants overtime underpayments, costs, all reasonable attorney's fees, prejudgment interest and, an additional amount as liquidated damages equal to one hundred percent of the total of such underpayments found to be due, all in the amount determined at trial.

COUNT III
(Spread of Hours Violations under the NYLL)

49. Mashkovtsev incorporates the allegations of all preceding paragraphs.

50. Defendants knowingly, willfully, and intentionally failed to pay Mashkovtsev one hour's pay at the basic minimum hourly wage rate, in addition to the minimum wage for any day in which the spread of hours exceeds 10 hours in violation of the NYLL and supporting regulation 12 NYCRR § 146-1.6.

51. Because of Defendants' willful violation of the NYLL and supporting regulations, Mashkovtsev is entitled to recover from Defendants spread of hour payments for the applicable shifts, costs, all reasonable attorney's fees, prejudgment interest and, an additional amount as liquidated damages equal to one hundred percent of the total of such underpayments found to be due, all in the amount determined at trial.

COUNT IV
(Failure to Notify under the NYLL)

52. Mashkovtsev incorporates the allegations of all preceding paragraphs.

53. Under NYLL § 195(1), at the time of hiring, Defendants were obligated to provide Mashkovtsev with a notice describing, among others, his hourly regular and overtime rates of

pay.

54. Defendants failed to provide Mashkovtsev with a notice in violation of NYLL § 195(1).

55. Mashkovtsev is entitled to recover from Defendants, in accordance with NYLL § 198(1-b) damages of fifty dollars for each work day that the violations occurred, together with costs and reasonable attorney's fees, all in the amount determined at trial.

COUNT V
(Failure to Provide Wage Statements under the NYLL)

56. Mashkovtsev incorporates the allegations of all preceding paragraphs.

57. Under NYLL § 195(3), Defendants had to furnish Mashkovtsev a statement with every payment of wages, listing, among others, regular hourly rate or rates of pay; the overtime rate or rates of pay; the number of regular hours worked, and the number of overtime hours worked.

58. Defendants failed to provide Mashkovtsev with wage statements with information correctly set forth as required by NYLL § 195(3).

59. Defendants conditioned Mashkovtsev receiving his wages on signing wage statements with incorrect (smaller) number of hours than he actually worked, and based his compensation on that incorrect number of hours.

60. Mashkovtsev is entitled to recover from Defendants, in accordance with NYLL § 198(1-d) damages of two hundred fifty dollars for each work day that the violations occurred, together with costs and reasonable attorney's fees, all in the amount determined at trial.

COUNT VI
(Retaliation under the NYLL)

61. Mashkovtsev incorporates the allegations of all preceding paragraphs.

62. Under NYLL § 215, "No employer or his or her agent, or the officer or agent of any corporation . . . shall discharge, threaten, penalize, or in any other manner discriminate or retaliate against any employee (i) because such employee has made a complaint to his or her

employer, . . . that the employer has engaged in conduct that the employee, reasonably and in good faith, believes violates any provision of this chapter, or any order issued by the commissioner."

63. Mashkovtsev complained to Defendants Pan and Wu regarding the conduct that constituted the violation of NYLL § 193(3) concerning wage statements. Specifically, Mashkovtsev requested statements reflecting his overtime compensation, which he was never furnished.

64. In response to Mashkovtsev complaint, Defendants reduced his overtime hours.

65. Reducing Mashkovtsev's overtime hours was a direct result of his complaint.

66. When Mashkovtsev complained about the reduction of his overtime hours, he was terminated.

67. Mashkovtsev is entitled to recover from Defendants, in accordance with NYLL § 215, liquidated damages, costs and reasonable attorney's fees and the order requiring Defendants to reinstate him at his position or an award of front pay in lieu of reinstatement, and an award of lost compensation and damages, costs and reasonable attorney's fees.

PRAYER FOR RELIEF

WHEREFORE, Mashkovtsev respectfully requests that the Court enter judgment against Defendants awarding:

A. Underpayments and damages under the FLSA

B. Underpayment and damages under the NYLL;

C. Liquidated damages under the FLSA and NYLL;

D. An award of front pay for the time Plaintiff remained unemployed as a result of termination by Defendants;s

E. Lost compensation and back pay;

F. Reasonable attorney's fees, costs, and expenses;

G. Prejudgment interest; and

H. Any other relief the Court deems just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Fed. R. Civ. Pro., Mashkovtsev requests trial by jury in this action of all issues so triable.

Dated: Brooklyn, New York
March 7, 2016

Respectfully submitted,

By: /s/ *Daniel Hymowitz*

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